

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

MICHEL PAYNE,

Plaintiff,

vs.

PETER KIEWIT SONS', INC.,  
ROBERT EDICK, MARK JENSEN and  
KEVIN MURRAY,

Defendants.

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8:06CV686

ORDER

This matter is before the court after notice of the death of one of the defendants, Kevin Murray. On November 22, 2006, the plaintiff returned the summons for Kevin Murray unexecuted. **See** Filing No. 10. The document noted that Kevin Murray is deceased. **Id.**; **see also** the parties' Report of Parties' Planning Conference (Filing No. 30). In accordance with Federal Rule of Civil Procedure 25(a), the plaintiff had 90 days, from the time the death is suggested in the record, to move for substitution of the deceased party. On March 9, 2007, the court entered an order allowing the plaintiff until March 30, 2007, to move for substitution of the deceased party, noting that otherwise the action would be dismissed against the deceased party. The plaintiff filed no response to the order. Accordingly,

**IT IS ORDERED:**

The defendant Kevin Murray is hereby dismissed as a party pursuant to Fed. R. Civ. P. 25(a) and 41(b), without prejudice.

DATED this 2nd day of April, 2007.

BY THE COURT:

**s/ Joseph F. Bataillon**  
Chief United States District Judge